



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0321; FRL-10023-81-Region 3]

#### Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality

#### Standards Second Maintenance Plan for the Tioga County Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the "1997 ozone NAAQS") in the Tioga County, Pennsylvania area (Tioga County Area). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0321. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2108. Mr. Yarina can also be reached via electronic mail at [Yarina.Adam@epa.gov](mailto:Yarina.Adam@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On February 8, 2021 (86 FR 8569), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the Tioga County Area through July 6, 2027, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on March 10, 2020.

### **II. Summary of SIP Revision and EPA Analysis**

On July 6, 2007 (72 FR 36892, effective same day), EPA approved a redesignation request and maintenance plan from PADEP for the Tioga County Area. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas – like the Tioga County Area – that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: 1) an attainment emissions inventory; 2) a maintenance demonstration; 3) a commitment for continued air quality

---

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

monitoring; 4) a process for verification of continued attainment; and 5) a contingency plan.<sup>2</sup>

PADEP's March 10, 2020 submittal fulfills Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the February 8, 2021 NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing that the area's design value<sup>3</sup> is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated PADEP's March 10, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements and proposed approval of the LMP for the Tioga County Area as a revision to the Pennsylvania SIP.

Other specific requirements of PADEP's March 10, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

### **III. EPA's Response to Comments Received**

EPA received comments on the February 8, 2021 NPRM from two commenters. All comments received are in the docket for this rulemaking action. A summary of the comments and EPA's responses are provided herein.

The first commenter asserts that EPA cannot approve this plan because air quality levels were not at or below 85% of the NAAQS, and that one of EPA's methods for demonstrating continued future maintenance of the NAAQS is flawed.

*Comment 1:* The commenter asserts that EPA cannot approve this plan "because the air

---

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

<sup>3</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

quality has not been below 85% of the NAAQS for the time period EPA claims.” The commenter claims that the following statement in EPA’s proposed approval of the limited maintenance plan is incorrect: “The Tioga County Area has maintained air quality levels below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2006, and maintained air quality levels at or below 85% of the NAAQS since 2009.” The commenter claims that this statement is refuted by EPA’s own data, which shows the air quality was at 0.071 for the years 2010-2012.

*Response 1:* The cited statement from the proposal is factually accurate, and EPA does not agree with the commenter that it is unsupported by the air quality data, nor do we agree that the commenter has identified a valid basis for disapproval. As discussed in the February 8, 2021 NPRM, based on the rounding convention described in 40 CFR part 50, appendix I, the 1997 ozone NAAQS is attained if the design value is 0.084 parts per million (ppm) or below (see 86 FR 8571); 85% of this standard would be a design value of 0.071 ppm. The data therefore supports EPA’s statement in the NPRM that the Tioga County Area has maintained air quality levels below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2006, and maintained air quality levels at or below 85% of the NAAQS since 2009. It is worth noting that even if the commenter’s assertion were correct, the Area would have been below 85% of the standard since 2012 and the Area’s LMP would still be approvable consistent with EPA’s long-standing guidance.<sup>4</sup>

*Comment 2:* The commenter also asserts that one of EPA’s methods for demonstrating continued future maintenance of the standard – specifically, the method that adds the greatest recent design value increase to the current design value – is “arbitrary and has no basis in scientific fact.” The commenter goes on to assert that “not only is the highest increase during a

---

<sup>4</sup> See “Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas” from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas” from Joseph Paisie, OAQPS, dated October 6, 1995; and “Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas” from Lydia Wegman, OAQPS, dated August 9, 2001.

certain point in time in the past not indicative of potential future conditions, but EPA arbitrarily chooses a time period with seemingly no bounds...EPA's use of this arbitrary formula to determine whether an area will not violate the NAAQS at some point in the future is based in science hope, not science fact and EPA should re-evaluate its use in approving the Tioga County Limited Maintenance Plan."

*Response 2:* As discussed in the February 8, 2021 NPRM, states may demonstrate continued maintenance of the NAAQS by showing stable or improving air quality trends in one or more ways (see 86 FR 8571). The method that the commenter refers to was relied on by EPA as additional support that the Tioga County LMP demonstrates continued maintenance of the 1997 ozone NAAQS. Consistent with EPA's long-standing guidance, the primary evidence EPA relied upon in determining that the Area would continue to maintain the standard throughout the ten years of the LMP was the clear downward trend of ozone levels in the Tioga County Area since 2006, including levels at or below 85% of the NAAQS since 2009.<sup>5</sup> Additionally, EPA notes the Tioga County Area is currently in attainment for the more-stringent 2008 and 2015 ozone NAAQS, which have design values of 0.075 ppm and 0.070 ppm, respectively; and future year design value projections from EPA show that the design value for the Tioga County Area is expected to be 0.0573 ppm (see 86 FR 8572). The data cited in the comment, taken together with these other factors, strengthen EPA's considered judgement that the plan adequately demonstrates continued maintenance of the 1997 ozone NAAQS.

*Comment 3:* The second commenter asserts that EPA cannot approve the Tioga County Area LMP because "it would do something that is not authorized under the rules." The commenter then advances various policy and legal theories that do not appear to be related to hypothetical future litigation in federal court regarding the legality of the Tioga LMP. The comment makes assertions about what factors the court will consider in resolving this hypothetical action and speculates how the court will rule against EPA.

---

<sup>5</sup> Id.

Response 3: EPA has no knowledge of any lawsuit involving the Tioga LMP in federal court and has not reason to believe any such litigation exists. Because the comment is addressed to hypothetical litigation, also because EPA's authority to approve this plan is well-established in the NPRM, it is EPA's judgment it has no obligation to respond to commenter's speculation as to the actions that EPA will need to take to address the ruling of a hypothetical lawsuit.

#### **IV. Final Action**

EPA is approving PADEP's second maintenance plan for the Tioga County Area for the 1997 ozone NAAQS as a revision to the Pennsylvania SIP.

#### **V. Statutory and Executive Order Reviews**

##### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices if they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving PADEP's second maintenance plan for the Tioga County Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 28, 2021

Diana Esher,  
Acting Regional Administrator,  
Region III.



For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart NN—Pennsylvania**

2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry “Second Maintenance Plan for the State College 1997 8-Hour Ozone Nonattainment Area” at the end of the table to read as follows:

#### **§ 52.2020 Identification of plan.**

\* \* \* \* \*

(e)\* \* \*

(1)\* \* \*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * * * *				
Second Maintenance Plan for the State College 1997 8-Hour Ozone Nonattainment Area	Tioga County Area	3/10/20	[insert date of publication in the Federal Register], [insert Federal Register citation]	The Tioga County area consists solely of Tioga County.

\* \* \* \* \*

[FR Doc. 2021-11925 Filed: 6/8/2021 8:45 am; Publication Date: 6/9/2021]